श्री अब्दुल मदनी : आपकी इजाजत से मैं बिल पेश करता हूं ।

†[ جناب اسحد مدنی . . . اپکی اجازت سے میں بل پیش کرتا ہوں -]

*The question was put and the motion was adopted.*

MR. CHAIRMAN : Now Shri M. Basavaraju. Not here. Now, J.P. Goyal.

THE CONSTITUTION (AMENDMENT) BILL, 1982 (to amend article 74, 75 etc.)

Sir, I move :

"That the Bill further to amend the Constitution of India, be taken into consideration."

This is a Constitution (Amendment) Bill No. XXI of 1982. In this Bill, certain Articles of the Constitution .. .

MR. CHAIRMAN : You have already spoken on it.

SHRI J.P. GOYAL : Not at all.

MR. CHAIRMAN : All right. You may continue.

SHRI J. P. GOYAL : Sir, I may read the Statement of Objects and Reaons.

. "This Bill seeks to advance the spirit of our federal Constitution which provides for the three wings of the State viz.. Executive, Judiciary and the Legislature.

[The Vice-Chairman (shri Santosh Kumar Sahu in the Chair]

It has been noticed that the Executive has tried to misuse the Provisions of Article 74 of the Constitution, where in it has been Provided that the President shall act on the advice of the Council of Ministers headed by the Prime Minister. Even in the matter of appointment of Judges and Chief Justice of the Supreme Court and of the High Courts, the Central Government has arbitrarily acted and has not even heeded, the advice given by the Chief Justice of India. In 1973, there was supersession of three senior-most Judges of the Supreme Court. In the High Court also supersessions have taken place. The executive has also not confirmed some Judges as their Judgments were not convenient to it. These actioro are not in Keeping with tb federal spirit of the Constitutio

During the pre-independence Period, there was hue and cry by our countrymen that there should be separation of the Judiciary from the executive. After indep* ndence, this was achieved to a great extent at the lower level and the Magistracy was separated. Now the judicial magistrates, munsifs, sessions judges and district judges are under the superintendence and control of the High Courts. However, it is interesting that the appointments of the judges of the High Courts are made by the Executive. With that end in view the Bill propose to amend the relevant articles of the Constitution so that the Supreme Court Which is the highest judiciary in the country could advise the President directly in the matter of appointment of the judges of the Supreme Court and of High Courts.

Independence of the Election machinery in our Constitution is as inportant as the independence of the Judiciary. The Election Comiss-ion plays a very important role in the implementation of our election law. The ruling party should not be allowed to make appointment to this high office. The Bill proposes suitable amendment in article 74 for the Purpose.

†ft ] Transliteration in Arabic script-

[Shri J. P. Goyal]

The Governor of a State also performs important functions under the Constitution. "The Governor of a State also performs important functions under the Constitution. He is appointed by the President on the advice of the Council of Ministers at the Centre and holds office during the pleasure of the President. He can be dismissed by the President at any time the Council of Ministers headed by the Prime Minister desires him to do so. In these circumstances, he is not expected to function fearlessly and to discharge his constitutional functions independently. It is, therefore, necessary to give him the same protection as is given to a Supreme Court Judge under article 124(4) of the Constitution in" the matler of removal from office."

Now, I quote article 74 of the Constitution which says :

"(i) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions."

And Section 2 of my amendment Bill says, I quote :

"In arficle74of the Constitution, for clau;e (i), the following clau;e shall be substituted, namely :—

'•(i) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the Preiident who shall, in exercise of his functions, act in accordance with such advice except in respect of the matters hereinafter provided, that is to say,—

(a) in exercise of his functions under chapter IV of Part V of the Constitution relating to the union Judiciary, the President shall act in accordance with the advice of the Supreme Court ;

(b) in exercise of his functions under Chapter V of part VI of the Constitution relating to the High Courts in the States, the President shall act in accordance with the advice of the Supreme Court which shall give such advice in consultation with the High Court concerned;

(c) in exercise of his functions under article 155 relating to the appointment of the Governor of a State and under article 324 relating to appointment of the Chief Election Commissioner and other Election Commissioners, the President shall act in accordance with the advice of a Committee consisting of the Prime Minister, the Leader of the Opposition in the House of the People, the Leader of the Council and the Leader of the Opposition in the Council of States, with the Vice-President of India as the Chairman of that Committee."

My explanation is : "Th? Leader of the Opposition in the House of the People shall be the Leader of the largest Group therein ; the Leader of the Council of States shall be the Leader of the Party in power in the Council of States shall be the Leader of the Party in power in the council ; and the Leader of the Opposition in the Council of States shall be the Leader of the Largest Opposition Group in the Council."

Now, Sir, article 74 of the Constitution is a basic thing which I am seeking amendment. The amendment suggested by me relates to the chapter IV of Part V and Chapter V of Part VI in the Constituion. Chapter IV of Part V deals with the Union Judiciary. And Chapter V of Part VI deals with the High Courts in the States. Therefore, I am suggesting that the President fhould act directly on the advice of the Supreme Court. The Judges of the Supreme Court very clearly know who is the Advocate, to be appointed

to the High Court as a Judge; and Mho is 1 he Judge from the High Court to be elevated to the Supreme Court Bench. If we want that the judiciary is to remain independent then the powers should not be vested with the executive to advise the President for the appointment, transfer, etc. of the High Court Judiciary or the appointment of the High Court Judges to the Supreme Court Bench and the Chief Justice. Because in the Supreme Court a? well as in the High Courts very important cases of election cases or petitions pertaining to the President, Vice-President and the Prime Minister are handled by the Judges there.

Justice is not only to be done but it should seem to be done. Therefore, it would be in the interest of democracy and the democratic system which our constitution envisages that the appointment of Judges in the High Courts and Supreme Court should be on the advice of the Supreme Court itself. The Supreme Court, of course, when the question is of appointment of a Judge in the High Court, can take the advice of the Judges of the High Court concerned where the apppointment is to take place because those Judges know better as to who is to be appointed to that Court. Of course, it may come here for a screening in the Supreme Court because in the Supreme Court, Judges from different High Courts are also sitting there. They also know the advocates and others as to who are capable to be appointed as Judges. Now, here, because the words in Article 74 as it exists today are "on the advice of the Council of Ministers" so, the Government has taken the view. Always, the lawyers have been fighting for it. The Bar Association has been fighting for what I am requesting for now to this House but the Government has taken the view. I am not saying that, this Government or the Janata Party Government had taken that view. But I must say that I requested the Law Minister at that time and he also took the same view, because this is what the lawyers have been fighting for The Government has always taken the view that, of course the Chief Justice of India may be consul ted but his consultation is not bin ding on the Minister. Whatever the Cabinet or the Minister will say, the President is bound by it. Ultimately, it is the Minister, whether he is the Law Minister or the Home Minister, whosoever he may be, who is responsible for the appoint ment. So, in this way, this is very necessary if you want to maintain a democratic Constitution wherein the independence of the judiciary is to be assured. This is regarding the Judges of the High Courts and Supreme Court. Particularly when I have said in the arms and objects of this Bill that in the pre-independence period, there was a hue and cry that there should be separation of the executive from the judiciary it is because the same magistrate used to pass orders and the same magistrate used to execute the orders. So, in this way, the nationalist forces in those days were troubled and there was a cry and after independence, there was a separation at the lower level and the Munsifs, Judges and the District Judges, are now under the Hight Court and in regard to their appointment and transfer the Government has *no* interference. Then, why should the Government have interference in the matter of appointment of the higher judiciary which controls the lower judiciary? In this way, the executive has got influence over the entire judiciary ; one can say like that. So, this is regarding Chapter 4 of Part 5 and Chapter 5 of Part 6.

Now regarding the appointment of Governor, Article 155, says ;

> "The Governor of a State shall be appointed by the President by warrant under his hand and seal".

Now, here also, the President shall act on the advice of the Council of Ministers under Article 74 of the

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Constitution. He cannot have his. own decision. There is nothing in Article 155 to say on whose advice. It means Article 74. He will have to act on the advice of the Council of Ministers. So, there is the Governor appointed as the man of the Central Govt. Now, there has been Sarkaria Commission. It was appointed to find out the Centre-States relationships and what will be the functions of the Governor and all that. I am suggesting here that the Governor may be so appointed so that the Opposition may also not say that this Governor is your man, he is not acceptable to us. So, let the Governor be appointed by a Committee in which there are four members i. e. the leader of the Lok Sabha, he is the Leader of the House there the leader of the Opposition in that House, leader of the House here in this House and the leader of the Opposition here. And the Explanation I have added is that the leader of the Opposition will be the leader of the largest group in the Opposition. This committee may be headed by the Vice-President of India who, of course, is elected by the two Houses of Parliament. In this way this committee will decide as to who will be the Governor, and there may be a panel of Governors. This is because the Governor has to act fearlessly. He has to perform many functions and sometimes he has to dissolve the Assembly and so on. He must perform judiciously the constitutional functions which are entrusted to him. So he also must be a very independent person like a Supreme Court Judge or a High court Judge if we want to maintain our federal constitution and a proper working of it.

Now the Chief Election commissioner is appointed by the President under Article 324 of the Constitution. There are certain words which I want to delete from article 324(2) The article says :

> "The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appoint ment of the Chief Election Commissioner and other Election Commissioner shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President."

I want to delete the words "subject to the provisions of any law made in that behalf by Parliament." And I have suggested in article 74 that the appointment of the Chief Election Commissioner or the Election Commissioners should also be done by the President on the advice of that committee headed by the Vice-President of India. In that the Opposition will also have some say in the matter of appointment of the Chief Election Commissioner. So in this way the issues which are before the Sarkaria Commission and on which there are articles every day—the functions of the Chief Election Commissioner and the function of the Governor—can be tackled. Let it be written in the Constitution itself that this is the mode of their appointment so that they may act fearlessly. As regards the Chief Election commissioner there is already a provision that he can be removed from office only in the way in which a Supreme Court Judge can be removed. No, no amendment is necessary regarding that aspect of the matter. My contention is that the Governors, the Judges of the Supreme Court and of the High Courts and the Chief Election Commissioner should act fearlessly because they have to discharge their constitutional functions.

The other amendments which' are sought to be made are consequential amendments.

There is one more thing about article 75. Now in Haryana, for example, last time it so happened that there was a complaint that the Governor appointed a particular

person as Chief Minister. Similarly the President can appoint a Prime Minister, and there is nothing in article 75 as to who should be the Prime Minister or who should be the Chief Minister. The language of article 75 gives very wide discretion to the President and the Governor to make the appointment of Prime Minister or Chief Minister, It is a very important article. It says :

> . "The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister."

The article does not say as to who should be the Prime Minister. Now it generally happens these days that the majority party elects its leader who is acceptable to the President. But situations may come, we do not know, where there is some dispute in the majority party also. For example, I must say that after the unfortunate assassination of the late Prime Minister, the present Prime Minister was appointed without any meeting of th< Congress Party, the ruling party. So I am seeking amendment of article 75 of this way that the leader of the House will be the Prime Minister or the Chief Minister and the House will decide as to who should be the Leader.

> "In Article 75 of the Constitution, in clause (1) for the words 'The Prime Minister shall be appointed by the Preside'nt' the words 'The President shall appoint a person elected as the Leader of the House of the People by its members to be the Prime Minister', shall be substituted."

After the members are elected, there should be a meeting of the House and in that meeting whosover secures the highest votes will be the leader of the House and he will be the Prime Minister. The President shall appoint only that person as Prime Minister or Chief Minister. Otherwise, Governors who are at present, according to us, nominees of the Centraj Government,—they are agent$_e$ of the Central Government in a wa are sometimes, at the behest of th^ Central Government, changing Chie$^s$ Ministers and there have been many complaints about their functioning.

Then, the other amendments to Articles 124 and 126 are consequential amendments—consequential to the amendment which I am seeking to Article 74 :

> "There shall be a Supreme Court of India consisting of a Chief Justice of India and such other Judges as the President may from time to time appoint."

At present the number of Judges is being fixed by Parliament. Today l he volume of work in the Courts is so much that it is better we leave it to the Supreme Court itself to decide as to how many Judges are required to clear out the arrears. Article 75 read with this amendment complete the chapter. What I mean to say is let the Judges decide themselves as to how many more of them are required and then the President shall appoint that particular number of Judges.

Then, for clause (2) the following clause shall be substituted, namely:

> "(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the advice of the Supreme Court."

This is a consequential amendment to the amendment in Article 74 because in regard to appointment of Judges of the Supreme Court and the High Courts it is the advice of the Supreme Court itself which will be binding on the President. Why I am saying this is there have been disputes in the working of these Articles in the past sometimes a junior Judge has appointed as Acting Chief Justice or Chief Justice. Therefore, I have

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suggested a proviso there —

"Provided that the seniormost Judge of the Supreme Court shall be appointed as the Cheif Justice of India".

Similarly, in Article 126—

″ for the words 'such one of the other Judges of the Court as the President may appoint for the purpose', the words 'the next seniormost Judge of the Supreme Court appointed by the President for the purpose' shall be substituted."

The idea is juniors should not be chosen. At present there is no such provision. Of course, the practice is there that it will be the seniormost but sometimes occasions may arise.

Then, in Article 156 of the Constitution for clause (1) the following clause shall be substituted, namely:

"(1) The Governor shall not be removed from his office except in like manner and on the like ground? as a Judge of the Supreme Court."

This is the same thing as I said earlier, that Governors should be fearless and their tenure should be guaranteed.

In Article 164 of the Constitution, in clause (1) for the words "The Chief Minister shall be appointed by the Governor", the words "The Governor shall appoint a person elected as the Leader of the Legislative Assembly by its members as the Chief Minister" shall be substituted. This is a consequential amendment.

Then, in Article 217 of the Constitution, for clause (1), the following clause shall be substituted, namely :—

"(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal on the advice of the Supreme Court which before giving such advice shall consult the High Court concerned.

Provided that—

(a) the seniormost Judge of the High Court shall be appointed as its Chief Justice ;

(b) a Judge may, by writing under his hand addressed to the President, resign his office ;

(c) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of the Judge of the Supreme Court;

5)

Then there is a provision for transfer of a Judge :

"In article 222 of the Constitution, for clause (1), the following clause shall be substituted, namely :

'(1) The President may transfer a Judge from one High Court to any other High Court'."

Then, in Article 223 of the Constitution, for the words, "such one of the other Judges of the Court as the President may appoint for the purpose", the words "the next seniormost Judge of the High Court appointed by the President for the purpose" shall be substituted.

Then, in Article 233 of the Constitution in clause (1) for the words "in consultation with", the words "on the advice of" shall be substituted.

Now, article 233 says :

3.00 P.M.

"Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

It further says :

"A person not already in the service of the Union or of th State shall only be eligible to be

appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

Here, Sir, in both the clauses, I want the words "in consultation with" to be substituted by the words "on the ad via. of the High Court" so that it may be binding on the Government.

Now, I come to article 324. Here also, in sub-clause (2) of this article I want the words, "subject to the provision of any law made in that behalf by Parliament, be made by the President." to be omitted. Here I want the mode of appointment of the Chief Election Commissioner to be mentioned in the Constitution itself and it should not be Is ft to Parliament because whatever the ruling party says will be acceptable and the laws will be passed accordingly. So, let there be the basic features of the Constitution itself; the appointment of the Chief Election Commissioner, the appointment of the Governors, the appointment of the Chief Justices and Judges of the High Courts and the Supreme Court. I am making this suggestion because the Constitutional functionaries can then act fearlessly to enforce the Constitution and the democratic principles enshrined in the Constitution. The feeling has always been that thing? have not been working in a befitting way. So, unless what I have suggested is done, this suspicion will always remain. I would, therefore, request the honourable Minister to accept these amendments so that they will be an improvement on the provisions of the present constitution. The amendments which are to be passed by Parliament are intended to improve the functioning of the Constitution. Therefore, I would request that these amendments may be accepted by the House and the other amendments which I am seeking may be passed after discussion, if necessary. Thank you, Sir.

*The question was proposed.*

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU)- Now Mr. Kalpnath Rai.

श्री कल्पनाथ राय (उत्तर प्रदेश) : आदरणीय अधिष्ठाता महोदय हमारे माननीय मित्र गोयल जी ने जो यह विधेयक प्रस्तुत किया है उस में कहा गया है कि कार्यपालिका ने संविधान के अनुच्छेद 74 जिस में यह व्यवस्था की गयी है कि राष्ट्रपति मंत्रि परिषद् की मंत्रणा के अनुसार कार्य करेगा जिस का प्रधान प्रधान मंत्री होगा के उपबंधों का दुरुपयोग करने का प्रयास किया है । उच्चतम न्यायालय और उच्च न्यायालय के न्यायाधीशों और मुख्य न्यायाधिपतियों की नियुक्ति के मामले में भी केन्द्रीय सरकार ने मनमाने ढंग से काम किया है और भारत के मुख्य न्यायाधिपति द्वारा दी गयी मंत्रणा को भी नहीं माना है । 1973 में उच्चतम न्यायालय के तीन वरिष्ठतम न्यायाधीशों का अधिक्रमण किया गया और एक कनिष्ठ न्यायाधीश को भारत के मुख्य न्यायाधिपति के रूप में नियुक्त किया गया । पुनः 1977 में उच्चतम न्यायालय के एक वरिष्ठतम न्यायाधीश का अधिक्रमण किया गया, उच्च न्यायालयों में भी अधिक्रमण किये गये हैं । कार्यपालिका के इस कारण कुछ न्यायाधीशों की पुष्टि भी नहीं की है कि उन के निर्णय उस के लिये सुविधाजनक नहीं थे । ये कार्य संविधान की संघीय भावना के अनुरूप नहीं हैं ।

स्वतंत्रता पूर्व अवधि के दौरान हमारे देशवासियों की यह पुरजोर मांग थी कि न्यायपालिका को कार्यपालिका से पृथक किया जाना चाहिये । स्वतंत्रता के पश्चात् इसे निचले स्तर पर काफी हद तक पूरा कर लिया गया और मैजिस्ट्रेसी को पृथक किया गया । अब न्यायिक मजिस्ट्रेट मुंसिफ सैसन न्यायाधीश और जिला न्यायाधीश उच्च न्यायालयों के अधीनस्थ तथा नियंत्रण के अधीन हैं । परन्तु रोचक बात यह है कि उच्च न्यायालयों के न्यायाधीशों की नियुक्तियां कार्यपालिका द्वारा की जाती है । इसी प्रकार सर्वोच्च न्यायापालिका अर्थात् उच्चतम न्यायालय की नियुक्तियां भी कार्यपालिका द्वारा की जाती है और

[श्री कल्पनाथ राय]

संविधान के अनुच्छेद 74 के अधीन राष्ट्रपति को मंत्रणा के अनुसार नियुक्ति के अधिपत्र पर हस्ताक्षर करने होते हैं। ऐसे कानूनी मामले जिन में सरकार के विरूद्ध महत्वपूर्ण मुद्दे अन्तग्रस्त होते हैं। उच्च न्यायालयों और उच्चतम न्यायालयों के समक्ष लाये जाते हैं। अतः यह आवश्यक है कि उच्च न्यायालयों और उच्चतम न्यायालयों के न्यायाधीशों की नियुक्ति का कार्य-पालिका पर नहीं छोड़ दिया जाना चाहिये। इसी उद्देश्य से विधेयक में संविधान के सुसंगत अनुच्छेदों को संशोधित करने का प्रस्ताव है जिस से कि उच्चतम न्यायालय जो देश में सर्वोच्च न्यायपालिका है, उच्चतम न्यायालय और उच्च न्यायालयों में न्यायाधीशों की नियुक्ति के मामले में राष्ट्रपति को सीधे मंत्रणा दे सके। हमारे संविधान में निर्वाचन तंत्र की स्वतंत्रता उतनी ही महत्वपूर्ण है जितनी कि न्यायपालिका की। निर्वाचन विधि के क्रियान्वयन में निर्वाचन आयोग एक बहुत महत्वपूर्ण भूमिका अदा करता है। सत्ताधारी दल को इस उच्च पद पर नियुक्ति करने की अनुमति नहीं दी जानी चाहिए। इस प्रयोजन हेतु विधेयक में अनुच्छेद 74 में उपयुक्त संशोधन करने का प्रस्ताव है।

संविधान के अन्तर्गत किसी राज्य का राज्यपाल भी महत्वपूर्ण कार्य करता है। केन्द्र में मंत्रिपरिषद की सलाह पर राष्ट्रपति द्वारा उसकी नियुक्ति की जाती है और राष्ट्रपति के प्रसाद पर्यंत वह अपना पद धारण करता है। राष्ट्रपति प्रधान मंत्री की अध्यक्षता में मंत्रिपरिषद की इच्छानुसार उसे किसी भी समय पदच्युत कर सकता है। इन परिस्थितियों में उससे यह आशा नहीं की जा सकती कि वह निर्भयता-पूर्वक कार्य करे और अपने संवैधानिक कृत्यों का स्वतंत्रतापूर्वक निर्वहन करे। अतः यह आवश्यक है कि पद से हटाए जाने के मामले में उसे वही संरक्षण दिया जाए तो संविधान के अनुच्छेद 124(4) के अधीन उच्चतम न्यायालय के न्यायाधीश को दिया जाता है।

अपने लोकतांत्रिक संविधान को बचाने के लिए संविधान के सुसंगत उपबंधों में ये संशोधन करना आवश्यक हो गया है।

आदरणीय उपसभाध्यक्ष महोदय, आदरणीय गोयल जी जो एक विद्वान वकील हैं, उन्होंने यह संशोधन प्राइवेट मैम्बर बिल के माध्यम से सदन के सामने रखा है। हिन्दुस्तान के संविधान में हमारी आजादी की लड़ाई के सेनानियों ने आजादी की लड़ाई के दौरान हिन्दुस्तान के संविधान को बनाया। जिस समय आजादी की लड़ाई लड़ी जा रही थी, उसी आजादी की लड़ाई के दौरान कांग्रेस पार्टी और आजादी की लड़ाई लड़ने वाले सेनानियों ने नये हिन्दुस्तान की नींव रखी, नया हिन्दुस्तान कैसा होगा उसकी कल्पना की थी और उसी कल्पना को मद्देनजर रखते हुए 15 अगस्त, 1947 को देश आजाद हुआ और जवाहरलाल नेहरू, महात्मा गांधी और बड़े बड़े देश के स्वतंत्रता संग्राम के सेनानियों ने हिन्दुस्तान की संविधान सभा का निर्माण किया और 26 जनवरी, 1950 को भारत एक गणतंत्र, डेमोक्रेटिक स्टेट बना। आपने इसमें कहा है कि संशोधन किया जाए। लेकिन किसी भी संविधान के दो रूप होते हैं। एक मेंडेटरी और दूसरा डाइरेक्टिव प्रिंसिपल्स। संविधान के नीति निर्देशक सिद्धांत और फंडामेंटल राइट्स होते हैं। हिन्दुस्तान के संविधान के अन्तर्गत हमारा प्रियेम्बल क्या है--

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRACY REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity ;

and to promote among them all.

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY . ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

मैं आपसे पूछना चाहता हूं कि हिन्दुस्तान के संविधान में सुप्रीम कोर्ट के जजों की नियुक्ति का मामला कब उठा ? यह सवाल तब खड़ा हुआ जब सुप्रीम कोर्ट ने गोलकनाथ केस के मामले में फैसला किया कि पार्लियामेंट को अधिकार नहीं है फंडामेंटल राइट्स या डाइरेक्टिव प्रिंसिपल्स के संबंध में अमेंडमेंट करने का । मैं पूछना चाहता हूं कि जनता के चुने हुए प्रतिनिधि जनता के प्रति आनसरेबल हैं या हिन्दुस्तान की जुडिशरी जनता के प्रति आनसरेबल है ? करोड़ों जनता के बीच जाकर जनता के प्रतिनिधि इलैक्शन मैनिफैस्टो के आधार पर चुनाव लड़ते हैं जनता के बीच जाकर 8-8 लाख लोगों के प्रतिनिधि और जो कौसिल आफ स्टेट्स हैं वहां से प्रतिनिधि हो कर यहां आते हैं हम जनता के चुने हुए प्रतिनिधि हैं तो क्या जनता के चुने हुए प्रतिनिधियों को भारत के संविधान में कोई परिवर्तन करने का अधिकार नहीं है ? गोलकनाथ केस के मामले में सुप्रीम कोर्ट ने पार्लियामेंट के अधिकार को चुनौती दी । पार्लियामेंट ने सुप्रीम कोर्ट को चुनौती नहीं दी। जब सुप्रीम कोर्ट के जजों ने गोलकनाथ केस में हिन्दुस्तान की पार्लियामेंट की सावरेनिटी को चुनौती दी तब हिन्दुस्तान की जनता के प्रतिनिधियों ने जो आन्सरेबल हैं जनता के सामने सुप्रीम कोर्ट की जुडिशियरी के सम्बन्ध में विचार करना शुरू किया । दूसरा मामला जब आया जब 1971 में श्रीमती गांधी ने बैंकों का राष्ट्रीयकरण किया । पूरे देश को मालूम हुआ कि बैंकों के राष्ट्रीयकरण का समर्थन कन्याकुमारी से कश्मीर तक हिन्दुस्तान के करोड़ों-करोड़ जनता ने घी के चिराग जला कर किया । बैंकों का राष्ट्रीयकरण किस आधार पर किया गया ? जो शांति दास मंगल दास के केस को आधार बना कर हिन्दुस्तान की पार्लियामेंट ने बैंकों का राष्ट्रीयकरण किया था और सुप्रीम कोर्ट ने उसी बैंकों के राष्ट्रीयकरण को अपने हाथ से खारिज कर दिया । जब मामला आया राजाओं के प्रिवी पर्स के सम्बन्ध में तो हाई कोर्ट ने, सुप्रीम कोर्ट ने फैसला किया था कि उस्मान अली के केस में प्रिवी पर्स देगी या नहीं देगी यह पालिटिकल निर्णय है। इसमें सुप्रीम कोर्ट दखल नहीं देगी। उसी आधार पर राजाओं का प्रिवी पर्स समाप्त किया गया । जब राजाओं का प्रिवी पर्स समाप्त कर दिया गया तब सुप्रीम कोर्ट ने अपने ही फैसले को बदल कर राजाओं के प्रिवी पर्स की समाप्ति के कानून को रद्द कर दिया । क्या हिन्दुस्तान के सुप्रीम कोर्ट को यह अधिकार है कि वह हिन्दुस्तान के मॉनोपली हाउसेज की रक्षा करे ? हिन्दुस्तान के राजा-रजवाड़ों की रक्षा करे ? हिन्दुस्तान के जो 10-20 पूंजीपति हैं जो जनता की छाती पर कुंडल मार कर बैठे हैं उनकी रक्षा करे ? मैं पूछना चाहता हूं आप वकील हैं और मैं एक मामूली पालिटिकल साइंस का व्यक्ति हूं । मैं पूछना चाहता हूं कि सुप्रीम कोर्ट के फैसले को ही आधार बना कर जो फैसला सुप्रीम कोर्ट ने किया जब देश की संसद ने, जब देश की पार्लियामेंट ने जनता के हित में यह निर्णय लिया कि बैंकों का राष्ट्रीयकरण किया जाए तो बैंकों के राष्ट्रीयकरण के फैसले को सुप्रीम कोर्ट ने रद्द कर दिया और तर्क यह दिया गया कि सुप्रीम कोर्ट जो चाहे पार्लियामेंट को कोई अधिकार नहीं है कि वह संविधान में कोई परिवर्तन करे । इसी बात के लिए क्या इंडीपेंडेंट जुडिशियरी है, इसी बात के लिए जुडिशियरी सिस्टम है देश में ? उपसभाध्यक्ष महोदय सुप्रीम कोर्ट ने स्वयं फैसला किया था और खुद ही के फैसले को उलट दिया । हिन्दुस्तान की न्यायपालिका ने हमेशा पूंजीपतियों का समर्थन किया, हमेशा लैंडलॉर्ड का समर्थन किया, हमेशा निहित स्वार्थों का समर्थन किया ।

हम दिन रात अपने चुनाव घोषणा पत्र के माध्यम से घोषणा कर रहे हैं कि भूमि सुधार कानून लागू हो । रोज सन् 52 से इस सदन में और उस सदन में चिल्ला रहे हैं कि भूमि सुधार लागू हो क्योंकि भूमि स्टेट का सब्जेक्ट है । जब कभी भी स्टेट ने भूमि सुधार का कानून

[श्री कल्पनाथ राय]

बनाया तो हाई कोर्ट ने उसको स्टे दे दिया । उसको रोक दिया । 10-10, 20-30 साल तक वह कोर्ट में पड़ा हुआ है तो यह पार्लियामेंट किस काम के लिए है ? किस बात के लिए पार्लियामेंट बनाई गई है ? केवल हिन्दुस्तान में ही यह संकट पैदा नहीं हुआ है यह संकट अमेरिका में भी है । और अमेरिका के प्रेजीडेन्ट श्री रूजवेल्ट ने न्यू डील का कानून बनाया था । उनको रूजवेल्ट की बात को मानना पड़ा । आप जानते हैं कि अमेरिका डेमोक्रेसी और कैपिटेलिज्म में विश्वास करता है । ऐसे अमेरिका के अन्दर भी जुडिशियरी को पावर्स पर पाबन्दी लगाने की बात सोची गई । प्रेजीडेन्ट रूजवेल्ट ने इसके लिए कोशिश की और वे इसमें कामयाब हुए । उन्होंने कहा कि जुडिशियरी को वह अधिकारी नहीं है कि वे अपनी मनमानी करे । प्रो० हीरेन मुखर्जी ने एक अंग्रेज राइटर श्री समरसेट माम की बात सामने रख कर 1973 में कहा था– "I would have wished that besides tlie bunch of flowers at the old valley, His Lordship had a packet of toilet papers which would remind him that he was a man like any other."

इसलिए मैं कहना चाहता हूं कि जज भी आदमी हैं । जुडिशियरी क्या है ? उन्होंने कहा कि तीन जजों को सुपरसीड किया गया है । श्रीमती इन्दिरा गांधी के चुनाव को कुछ लोग जुडिशियरी में ले गये और कुछ निहित स्वार्थी लोगों ने उसको रद्द कर दिया । उस वक्त श्री हेगड़े सुप्रीम कोर्ट के जज थे । वे इसी राज्य सभा के सदस्य ह चुके हैं । कर्नाटक की जोइन्ट स्टाफ कम्पनी के सेक्रेटरी थे और कर्नाटक की लैण्ड लार्ड एसोसिएशन के भी सेक्रेटरी थे । उसी श्री हेगड़े को श्री निजलिंगप्पा की सिफारिश पर सुप्रीम कोर्ट का जज बनाया गया था । श्री निजलिंगप्पा की कांग्रेस अलग बन गई और श्रीमती इंदिरा गांधी की समाजवादी विचारधारा की कांग्रेस अलग बनी । उस वक्त सुप्रीम कोर्ट के जज श्री हेगड़े ने राजनीति से प्रेरित होकर बदले की भावना से श्रीमती गांधी के खिलाफ अपना फैसला दे दिया । उन्होंने कहा कि तीन जजों को सुपरसीड किया गया । लेकिन मैं पूछना चाहता हूं कि क्या श्री हेगड़े कर्नाटक की लैण्ड लार्ड एसोसिएशन के सेक्रेटरी नहीं थे ? क्या श्री हेगड़े कर्नाटक की जोयन्ट स्टाफ कम्पनी के सेक्रेटरी नहीं थे ? क्या चेम्बर आफ कामर्स के वकील नहीं रहे थे ? क्या उसके बाद वे पार्लियामेंट के मेम्बर नहीं बने थे ? उनको श्री निजलिंगप्पा की सिफारिश पर सुप्रीम कोर्ट का जज बनाया गया था । उन्होंने बेस्टंड इटरेस्ट और प्रेजुडिस तथा राग-द्वेष की भावना से प्रेरित होकर अपना फैसला दे दिया । इनका कहना है कि एक्जीक्यूटिव को कोई पावर्स नहीं हैं, पार्लियामेंट को कोई पावर्स नहीं हैं । लेकिन मैं यह कहना चाहता हूं कि हमारी पार्लियामेंट को हमारे संविधान में सोवरन पावर्स दे रखी हैं । वह संविधान में कभी भी कोई संशोधन कर सकती है । पहले हमारे संविधान में यह लिखा था कि इंडिया विल बी ए डेमोक्रेटिक स्टेट । लेकिन श्रीमती इंदिरा गांधी ने 42वें संशोधन के माध्यम से सन् 1976 में कहा कि इंडिया विल बी ए डेमोक्रेटिक सोशलिस्ट एण्ड सैकुलर रिपब्लिक । हर हिन्दुस्तानी जो भी पार्लियामेंट का मेम्बर बनता है या मिनिस्टर बनता है, वे और हमारे विरोधी दलों के सदस्य, सरकारी दल के सदस्य, एम०पीज० और एम०एल०ए० एज०, सब भारत के संविधान की कसम खाते हैं और कहते हैं कि हम इस हिन्दुस्तान के डेमोक्रेकिट, सोशलिस्ट और सेकुलर रिपब्लिक केरेक्टर को अक्षुण्ण बनाये रखेंगे और इसकी रक्षा के लिए अपने जान की भी बाजी लगा देंगे । सोशलिज्म की दिशा में जितने भी कदम श्रीमती इंदिरा गांधी ने उठाये उनके खिलाफ सुप्रीम कोर्ट ने निर्णय दिये हैं । मैं समझता हूं कि मोनोपोली हाउसेज के हितों की रक्षा के लिए, निहित स्वार्थी भावनाओं से प्रेरित होकर, बिग बिजनेस हाउसेज के हितों की रक्षा के लिए श्रीमती इंदिरा गांधी के खिलाफ फैसला दिया गया । आप जानते हैं कि हिन्दुस्तान की पार्लियामेंट सबसे सुप्रीम है, सॉवरन है । वह जनता के प्रति एकाउन्टेबल है । हम लोग जनता के प्रति जिम्मेवार हैं । आज हमारे देश में क्या हो रहा है ? सातवीं पंचवर्षीय योजना के लिए रिसोर्सेज हमारे पास नहीं हैं । हमें

सातवीं पंचवर्षीय योजना के लिए को पैसा चाहिये । हमने उन रिसोर्सेज के गैप को पूरा करने के लिए थोड़ा टैक्स बढा दिया तो आप पार्लियामेंट को चलने नहीं दे रहे हैं जब कि आप जानते हैं कि हिन्दुस्तान की सातवीं पंचवर्षीय योजना को चलाने के लिए हमें जितने रिसार्सेज की आवश्यकता है उतने रिसार्सेज हमारे पास नहीं हैं अगर हिन्दुस्तान के विरोधी दल के नेता अपनी संयुक्त बैठक में सातवीं पंचवर्षीय योजना में रिसार्सेज किस तरह से इकट्ठा होंगे, इसकी एक योजना बनाकर प्रधान मंत्री श्री राजीव गांधी के सामने पेश करते और कहते कि इस तरह से रिसार्सेज मोबिलाइज कीजिए और आप टैक्स मत लगाइए और अगर वे आपकी बात को नहीं मानते तो फिर आपको सड़कों पर जाने का अधिकार था । विकासशील देश को जनतंत्र के रास्ते से देश की प्रगति के लिए आप कोई रास्ता नहीं बता रहे हैं । इसलिए आदरणीय उपसभाध्यक्ष महोदय, मैं हिन्दुस्तान के विरोधी दल के नेताओं से कहना चाहता हूं कि विकासशील देश में जनतंत्र को कायम रखना एक बहुत बड़ी चीज है। आज की दुनियां में जो विकसित और विकासशील देश हैं और आज दुनियां में साम्राज्यवाद खत्म हो गया है और एशिया तथा अफ्रीका के सैकड़ों मुल्क आजाद हुये हैं और पचासों देशों में डेमोक्रेसी आई । इनमें हिन्दुस्तान ही एक ऐसा देश है जिसमें पिछले 38 सालों में डेमोक्रेसी कायम है, एक्जीक्यूटिव, जूडीशियरी और पार्लियामेंट कायम है । हमारे बगल के देश पाकिस्तान में डेमोक्रेसी कई बार आई और कई बार खत्म हुई, बर्मा में डेमोक्रेसी नहीं है, चीन में नहीं है, लंका की दुर्गति आप देख रहे हैं, ईरान में नहीं है । एशिया और अफ्रीका के सैकड़ों विकासशील देशों में जनतंत्र मिटा दिया गया है । लेकिन हिन्दुस्तान में पिछले 38 सालों से डेमोक्रेसी कायम है । यह कोई मामूली उपलब्धि हिन्दुस्तान जैसे विकासशील देश के लिए नहीं है, यह हमारे राष्ट्रीय नेताओं की मामूली उपलब्धि नहीं है जो पिछले 38 सालों से हिन्दुस्तान में डेमोक्रेसी कायम है । एक तरफ तो आप देश की एकता की बात करते हैं, फेडरल सिस्टम को मजबूत बनाने की बात करते हैं लेकिन आप अपने हृदय पर हाथ रखकर पूछिये कि जो फैसला श्रीमती इंदिरा गांधी के खिलाफ हाईकोर्ट ने दिया था क्या वह फैसला हिन्दुस्तान को नैस्तनाबूद करने का फैसला था या नहीं, क्या वह फैसला हिन्दुस्तान की एकता को नष्ट करने का फैसला था या नहीं । उस फैसले के पीछे क्या यह कारण नहीं था कि हिन्दुस्तान में सोशो-एकानामिक चेंजेज न हो, सामाजिक और आर्थिक उत्पीड़न को समाप्त करने की दिशा में काम न हो । मैं पूछना चाहता हूं ... (व्यवधान) ...

आदरणीय उपसभाध्यक्ष महोदय, हम देश में प्रजातंत्र को बचाना चाहते है । आदरणीय उपसभाध्यक्ष महोदय, तीन साल के लिये जनता पार्टी को हुकूमत मिली थी । लेकिन उन तीन सालों के लिये यह अपनी पंचवर्षीय योजना का मसौदा नहीं बना सके, नेशनल डेवलपमेन्ट कौंसिल की मीटिंग नहीं बुला सके, ये सातवीं पंचवर्षीय योजना नहीं बना सके । इन्होंने हिन्दुस्तान की सारी अर्थव्यवस्था नष्ट कर दी और हिन्दुस्तान की एकता को चौपट कर दिया और यहां पर ये डेमोक्रेसी की बात करते हैं । मैं मालवीय साहब से पूछना चाहता हूं कि क्यों नहीं आपने पंचवर्षीय योजना का मसौदा पेश किया, क्यों नहीं आपने नेशनल डेवलपमेन्ट कौंसिल की मीटिंग बुलाई ? कांग्रेस की हुकूमत 1952 से लगातार आज तक हिन्दुस्तान का डेवलपमेन्ट सही ढंग से कर रही है । हम यह नहीं कहते कि जितना हिन्दुस्तान में होना चाहिए था उतना कर दिया । हम यह भी नहीं कहते जितनी जनता चाहती थी उतना कर दिया । लेकिन मैं यह जरूर कहना चाहता हूं कि जो कुछ हिन्दुस्तान का विकास हुआ वह कांग्रेस की लीडरशिप ने किया, आपने नहीं किया । कांग्रेस ने यहां जूडीशियरी सिस्टम को कायम रखा, न्यायपालिका को कायम करके रखा । आदरणीय उपसभाध्यक्ष महोदय, हमारे कम्युनिस्ट पार्टी के लोग हैं । कल मोर्चा हुआ पटेल चौक पर प्राइस राइज के खिलाफ, मैं पूछना चाहता हूं कि अगर राजीव

[श्री कल्पनाथ राय]

गांधी के सामने सारे विरोधी दलों के लोग सातवीं पंचवर्षीय योजना का मसौदा पेश करते कि इस ढंग से सातवीं पंचवर्षीय योजना के लिये रिसोर्सेज मोबलाइज करें, हमारी थ्योरी को मान लिया जाय और इस तरीके से टैक्स लगाइये और वे इस मसौदे को न मानते तो आपको प्रदर्शन करने का अधिकार था। लेकिन प्लान्ड एकानामी को मजबूत करने के लिये, अपनी इंडिपेंडेंट सावरेंटी को बचाने के लिये, देश में लोकतंत्र और समाजवाद को कायम रखने के लिये त्याग और तकलीफ उठाकर ही रिसोर्सेज जुटाने होंगे। मैं आपको यह बताना चाहता हूं कि बी०जे०पी० और कम्युनिस्ट इस जन्म में एक नहीं हो सकते। उनके इकोनोमिक प्रोग्राम एक साथ नहीं हो सकते। कुर्सी के सवाल पर वह एक हो सकते हैं। क्योंकि वे जानते हैं कि तेलुगु देशम् और लोक दल के लोग एक नहीं हो सकते। इनके पास कोई लक्ष्य नहीं है, कोई परस्पेक्टिव नहीं है, कोई नजरिया नहीं है, कोई दृष्टिकोण नहीं है। इसलिए आप हिन्दुस्तान में जनतंत्र की बात नहीं कर सकते। विरोधी दल के लोगों को इस बात का गर्व करना चाहिये कि हिन्दुस्तान ही एक ऐसा देश है जहां डेमोक्रेसी और सोशलिज्म एकसाथ है। अमरीका में डेमोक्रेसी तो है लेकिन सारी दुनिया की अर्थ-व्यवस्था को लूट कर अमरीका की अर्थ व्यवस्था बनी है। वहां डेमोक्रेसी है पर समाजवाद का कोई नाम नहीं ले सकता है। रूस और चीन में समाजवाद है मगर वहां आप पटेल चौक पर प्रदर्शन नहीं कर सकते हैं। यदि ऐसा करेंगे तो आपको साइबेरिया के जंगलों में भेज दिया जाएगा। वहां डेमोक्रेसी नहीं है, समाजवाद नहीं है, हिन्दुस्तान में हमने डेमोक्रेसी, समाजवाद और सेकुलरिज्म तीनों को स्वीकार किया है। आज दुनियां के किसी भी देश में ऐसा नहीं है। यह है हमारी आजादी की लड़ाई के सेनानियों का संविधान और यह हैं उस संविधान के रास्ते पर चलने वाले उद्देश्य। इसलिए आपको इस पर भी गम्भीरता से विचार करना चाहिये कि हिन्दुस्तान में जो पोलिटिकल फिलास्फी और पोलिटिकल सिस्टम काम कर रहा है क्या दुनियां के किसी भी देश में ऐसा कोई सिस्टम काम कर रहा है? सेकुलरिज्म तथा माइनारिटीज की रिस्पेकटेबिलटी हिन्दुस्तान में जो है क्या दुनियां में किसी भी देश में है, क्या बंगलादेश में है, क्या पाकिस्पान में है, क्या बर्मा में हैं? क्या कम्युनिस्ट रूस में एक भी माइनार्टी कम्युनिटी का आदमी प्रेजीडेंट, मिनिस्टर या पोलिट ब्यूरों का मैम्बर बना है, क्या चीन में कोई माइनार्टी कम्युनिटी का आदमी मिनिस्टर, सेक्रेटरी, या पोलिट ब्यूरो का मैम्बर बना है, क्या अमरीका में हब्शियों को कोई स्थान प्राप्त है? क्या कम्युनिस्ट सिस्टम में और केपिटालिस्ट देशों में किसी भी देश में माइनार्टीज की कोई रिस्पेक्टोरेटाज है? अगर कोई ऐसा देश है तो वह हिन्दुस्तान है। उस देश का नाम हिन्दुस्तान है, उस लीडरशिप का नाम महात्मा गांधी, जवाहरलाल नेहरू, इन्दिरा गांधी और राजीव गांधी और कांग्रेस लीडरशिप है। अगर मालवीय जी हमारी बात स्वीकार करते हैं तो मालवीय जी जैसे हर आदमी को डेमोक्रेसी को मजबूत करना चाहिये जिन कारणों से जनता पार्टी चरमरा कर टूट गई 1980 में क्या वे कारण चले गये हैं क्या बी. जे. पी. आज डबल मैम्बरशिप का सिद्धांत चला गया है क्यों वे घटक एक हो रहे हैं सत्ता के लिए? क्या उनके सिद्धांत और नीति अलग अलग हो गये? फिर क्यों? जहां कुर्सी के लिए 1977 में एक हुए वे सिद्धांतों का झगड़ा कर के देश को तबाह कर के 1980 में अलग हो गये जब तक आपका सिद्धान्त एक नहीं होता फिर एक क्यों हो रहे हैं? मैं उन लोगों से पूछना चाहता हूं कि दुनियां में साम्राज्यवादी ताकतें आज डेमोक्रटिक डवलपिंग कंट्रीज को डिस्टेबलाइज कर रही हैं आप साम्राज्यवादियों की नाकेबन्दी की बात समझते हैं, प्रशान्त महासागर में साम्राज्यवादी बेड़े की बात समझते हैं, हिन्दुस्तान के चारों तरफ की नाकेबन्दी की बात समझते हैं तो फिर आज साम्यवादी दक्षिण-पंथियों के साथ, प्रतिक्रियावादी ताकतों के साथ क्यों इकट्ठा हो रहे हैं? मान लीजिये आपको सत्ता मिल जाए तो क्या आप इकट्ठा मिल

कर रह सकते हैं ? नहीं रह सकते हैं। भारत की एकता और अखण्डता को कायम रखने के लिए हमारी आजादी की लड़ाई के सैनानियों ने हमारा संविधान बनाया था। इसकी रक्षा के लिए हिन्दुस्तान में जो हमने ज्यूडिशियरी और एग्जीक्युटिव बनाई है वह सिस्टम 38 वर्ष से हिन्दुस्तान में काम कर रहा है। हमारे विद्वान वकील गोयल जी ने एक और बात भी कही है कि गवर्नरों की नियुक्ति संविधान की धारा 124 के अधीन की जाती है

The President will act on the advice of the Council of Ministers. इसमें कहां यह लिखा हुआ है ? मोरारजी की सरकार ने 1977 में जिन संशोधनों को चाहा उनको खत्म किया आपने 1977 में संविधान में संशोधन किया मगर इस आर्टिकल को क्यों नहीं बदला ? आपने इन्दिरा जी द्वारा किये गये संशोधनों को रद्द किया मगर इस को क्यों नहीं बदला ? मीठा-मीठा गप कड़वा-कड़वा थू। जब आपने इस्तेमाल किया तो बहुत अच्छा था जब हम इस्तेमाल कर रहे हैं तो आपको ठीक नहीं लग रहा है जिस पद्धति से मोरारजी देसाई जी ने, चौधरी चरण सिंह जी ने गवर्नरों की नियुक्ति की उसी पद्धति से हम भी गवर्नरों की नियुक्ति कर रहे है। जब यहां देवराज अर्स जी अपने विधान सभा के सदस्यों के साथ दिल्ली में थे तो 12 बजे चौधरी चरण सिंह जी ने हमारी कांग्रेस की सरकार को बर्खास्त किया था क्या यह आपको मालूम नहीं है ? क्या यह कांस्ट्रीट्यूशन था, लोगल था ? या गोयल साहब आप भी उनके बड़े भारी सलाहकार हैं आपने उनको मना किया कि मत गिराओं उनकी सरकार। तो आप शिक्षा देने के लिए आये हैं कांग्रेस पार्टी हमेशा लिबरल रही है, उदार रही है, इसकी परम्पराएं उदार रही हैं हमारे जस्टिस बहरूल इस्लाम जी जो सुप्रीम कोर्ट के जज थे हमारी बगल में बैठे हैं।

तीसरी बात आपने कही कमीशन की नियुक्ति। इलेक्शन कमीशन की नियुक्ति चीफ जस्टिस करे . . . (व्यवधान)

श्री जे० पी० गोयल : कमेटी करे।

श्री कल्पनाथ राय : कमेटी क्यों करे। कमेटी में स्वर्ग से देवता आयेंगे। हिन्दुस्तान में रहने वाले ही होंगे यहीं के रहने वाले हमारे आप जैसे लोग हमारे जैसे ही जात पात में बंटे होंगे। जिस पद्धति से मोरारजी देसाई के जमाने में इलेक्शन कमीशन की नियुक्ति हुई तो उस समय आपने क्यों नहीं कमेटी बनाई। फिर हमारे लिए ही यह शिक्षा क्यों है ? आप तो उनके सबसे बड़े सलाहकार हैं चौधरी चरण सिंह जी के। मान लीजिए मोरारजी देसाई जी ने नहीं किया तो चौधरी चरण सिंह जी ने क्यों नहीं किया। आप और मालवीय जी दोनों क्लोज एडवाइजर्स हैं उन्हें, आपने क्यों नहीं कराया। हमको क्यों शिक्षा दे रहे हैं।

हिन्दुस्तान के संविधान को अक्षुण्ण रखने के लिए, कायम रखने के लिए भारत के सामाजिक आर्थिक परिवर्तनों को मद्देनजर रखते हुए भारत के संविधान में जो संशोधन किये गये हैं वे हमारे प्रधान मंत्री हमारी सावरेन पार्लियामेंट ने और पार्लियामेंट के चुने हुए एम०पीज ने किये हैं वे राष्ट्र हित को, देश हित को राष्ट्रीय अखंडता को राष्ट्रीय एकता को मद्देनजर रखते हुए किये हैं दुनियां में जो कुचक्र चल रहा है उनको देखते हुए किये हैं। मैं ईश्वर से प्रार्थना करता हूं कि हे ईश्वर एशिया अफ्रीका के मुल्कों में हमारे भारत के जनतंत्र का जो दिया जल रहा है आप इस राष्ट्र को बुद्धि दें वह दिया जो जल रहा है जिसकी मशाल राजीव गांधी जी के हाथ में है वह मशाल जलती रहे और दुनियां में भारत एक लोकतंत्र का नमूना बना रहे। इन्हीं शब्दों के साथ मैं आपको धन्यवाद देता हूं।

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU) : Mr. Ghulam Rasool Matto. He is not here. Mr. Pawan Kumar Bansal.

SHRI PAWAN KUMAR BANSAL (Punjab) : Mr. Vice-Chairman, Sir, sitting here, I have

[Shri Pawan Kumar Bansal]

tried to give a thought to the various provisions of the Constitution which are sought to be amended by this Bill. Permit me to say, Sir, that I am personally unable to agree with what Mr. J.P. Goyal has said. Very briefly, I would refer to the various provisions and to begin with, I have only to say that though in a changing, moving, dynamic society as ours, it is essential that the legal procedures or the law itself does not really bogous down, it is also imperative to see that in a democracy, it is the convention and precedent more than the law itself that govern the society. In this case, applying this principle, I feel that the amendments suggested are not really called for. I am afraid, the interpretation which has been given to Article 75 and the amendment sought to be made therein would completely shatter the party system which is at present prevelent in our country. In this connection, I would very briefly refer to the existing provisions of Article 75 of the Constitution which says that the Prime Minister shall be appointed by the president and other Ministers shall be apointed by the President on the advice of the Prime Minister. Now, what the proposed amendment suggests is that the President shall appoint the person elected as the Leader of the House of the People by its Members to be the Prime Minister. By this the only interpretation is that irrespective of the Party affiliations all the Members of the House of People, that is the Members of the Lok Sabha, would vote for the office of Prime Ministership. I wonder what system our learned hon. Member is really advocating over and above the system which has withstood all the tests of time, all the vicissitudes that the Indian society has had to face from time to time and I would say very gladly that it has really shown to the world that the Indian democracy is there or all the time to stay.

Concomitant with this is the responsibility that vests in the Council of Ministers. If we were to pestulate a situation where all the Members of the Lok Sabha were to vote for the election of the Prime Minister , I am sure a certain situation may arise, which we are not foreseeing at ,the moment, but may really lead us in trouble and secondly, a situation may arise and it did arise onece when the President, using his wisdom., appointed Chaudhry Charan Singh as the Prime Minister. Here a situation may crop up where it may lie with the President to see as to how he has to run the Government of the country and what temporary or interim arrangements he has to make before calling the general election. But if the provision is the one suggested now through the amendment were to be there in the Constitution, I am sure it will create more problems than solve one. But it is here that I lay emphasis on the establishment, nurturing and furtherance of demoratic institutions and precedents than laving down law which would not be of real use to us.

Thereafter I refer to the provision regarding appointment of the Judges of the Supreme Court. I am at one with the hon-Member when he says that we have to really evolve a judicial system in our country where people have full confidence in the Judges and ensure that by any act 01 omission the system does not come on the varge of a total failure. Here the first thing that the hon. Member really wants this House to adopt through this Bill is that the President shall be guided by the Prime Minister in matters other than concerning the judiciary and the Election Commi-sion. And coming to the substantive provision in Articles 124 and 126, the amendment suggested is that the number of Judges fixed for the supeme Court will be that as the President may fix from time to time. When we look at the present provision,

we find that now it is the Parliament which fixes the number of Judges. Sir, in a democracy the people of the country express their views, react to the things and situations through their elected representatives, whether it is in the Parliament or in the State Assemblies. For that our founding fathers, with all the wisdom they had at their back, really provided for a situation as that and I do not think that any change is called for. And when Mr. Goyal suggests an amendment to clau e 2 of artilce 124, he perhaps forgets that at present there is a provision in the Constitution that a Judge of the Supreme Court would retire at the age of 65. In its place if we were to have the clause as suggested by the hon. Member there would by a complete omissions of a provisions as that. I do not really know whether it is sought to be suggested that a Judge of the Supreme Court should be a judge for whole of his life, and if he really means that, I would humbly beg to differ with him. The present age fixed for retirement is a very reasonable age fixed for that purpose.

Sir, coming to Article 126, an amendment is suggested that when an acting Chief Justice has to be appointed, it will be the next senior most Judge who would be appointed by the President for the purpose. I really wonder what prompted the hon. Member to make this suggestion because personally I do not know of any instance where the established precedents were not followed by the President for appointing an acting Chief Justice. I think the provision as it exists now does give some scope of flexibility. If for any reason the President feels that the next senior most puisne Judge is not, for any particular reason, considered very fit, or it is not expedient— for instance he may be retiring in another 15 days—if in such a case the President feels that the next senior most Judge may not be appointed as the acting Chief Justice, this gives him scope to really look into the matter and appoint a person who is considered fit for the job.

In the Statement of Objects and Reasons appended to this Bill, much emphasis has been laid on the supersession of three Judge.-, may way back in 1973. I would once again say and rather loud the precedent under which it is the usual practice that the seniormost Judge is appointed as the Chief Justice and excepting the two occasions which have been enumerated here, we have never had an occasion when the senior most Judge did not come to occupy the post of the Chief Justice. I for one am definitely of the opinion that to strengthen democracy in the country, to bring more merit—when I use the word 'merit" I do not mean to suggest that the Judges who occupy the position of a Judge do not have the requisite merit but I lay emphasis on the fact that when a person is to be elevated to the seniormost position anywhere in any institution, whether it be judiciary or any office, or for that matter any Commission etc.— seniority alone should not be the criteria. If we want results, if we want progress, if we want the confidence of people established in our institutions, it is absolutely essential that the most meritorious person should adorn the highest office and, without going into the controversy regarding the supersession of three Judges, I feel that the present provisions of the Constitution again are not in any way derogatory to the functioning of a democratic society. Any person holding any high office must always know that he has to justify his existence, that he has to justify his any subsequent promotion by his merit alone.

Then, Sir, there is a reference regarding the State Judiciary. If we have a look at the provisions as those now exist, we know that the President consults the Chief Justice

[Shri Pawan Kumar Bansal]

and the Governor of the State for the appointments made to the State High Court. In cases other than that of the appointment of Chief Justice of a State High Court, the Chief Justice of the concerned High Court is also consulted. If such a provision is changed and we have an omnibus provision that the President shall be advised and in that way a binding advice on the President regarding the judiciary will be that of the Supreme Court or the High Court. I think a situation may arise when the matter concerning the administration of law and justice may fall outside the scope of this House, and I would not for a moment wish to have a situation like that. Now, whenever the Members of Parliament feel or have some reaction to any development regarding the administration of justice, there are ample opportunities and various forums for us to agitate and bring the matter to the notice of the Government through the Parliament and in that way take the issue to the people. But if the theory of separation of the judiciary from the executive as enunciated by the honourable Member is taken to its logical ends, I am sure Member of Parliament would never have it within their jurisdiction even to discuss the subjects relating to the administration of justice.

Sir, I move to the suggestion concerning the transfer of Judges of one High Court to another. The present position is that the President can order a transfer of a Judge from one High Court to another after consultation with the Chief Justice of India and I think it is a very salutary provision. Why an amendment is suggested to this, I could not understand.

Before I conclude, Sir, I would like to just emphasize that rightly, in our country, there is complete separation of the functioning of the three pillers of democracy, and that has also been admitted by the honourable Member piloting this Bill. But when he refers to the situation where the appointment to the High Courts and the Supreme Court are made by the President, it is here that he entertains a dcubt about the judiciary being subordinated by the executive. Sir, the past shows that never have the executive tried to suborn the judiciary, but I would also like to add that the dignity that is lent to an office depends on the incumbent of the office. The people of the country expect the judges of the High Courts and the Judges of the Supreme Court to be men of virtue, and for a moment 1 do not entertain a doubt about that. I know that once a person is elevated to that position, he would act according to the Constitution, knowing very well as to what his functions are. There is no question of raising a doubt or any apprehen-' sion about the functioning of the Supreme Court or High Court Judges. Always in the past they have acted with the utmost independence, maintaining the dignity of their office, sanctity of the Constitution and unity of the country, and I am sure they would continue doing that. Apprehensions which we have from time to time often take various other overtones. The judiciary is something, I fee], from which we should keep our hands off, and whatever may be our political differences on various other scores, anything concerning the judiciary should not be dragged in and made subject of controversy because we all expect ultimately to maintain full confidence of the people in the various democratic systems of which it is the judiciary which acts as a watchdog. And the Constitution that we at the moment have, the precedents and convention that have been established in the country and the past experience show that never has there been any challenge to the judiciary whatever some people may say, and I am sure that that position would always be maintained.

Thank you.

SHRI GHULAM RASOOL MATTO (Jammu & Kashmir) : Mr. Vice-Chairman Sir, I rise to support the Bill presented by Mr. Goyal.

The first object of the Bill is that the appointment of the High Court Judges and the Supreme Court Judges should be done in consultation with the Chief Justice of India. This is very important for the simple reason that at the present moment there are three or four consultation, even five consultations before any High Court Judge is appointed and ultimately when he is appointed what we find is that he is a man who is neither known in the judicial circles nor known in any other circles as being a bright man to head a High Court or things like that. ' What happens at the present moment, Sir, is that first the Chief Justice of the relevant High Court is also consulted the State Government also recommends, then the Central Government also comes into the picture, then the Chief Justice of India is also consulted, and then in the consultations by the Government, I can say without any fear of contradiction that some politics is also made to play a part, It is, therefore, necessary and essentia] that in order to get the bet talent as our High Curt Judges and the Supreme Court Judges the process should be limited to determination by the Chitf Justice of India. The Chief Justice of India in his fair judgement on the basis of the record of the particular persons, would recommend to the President the appointment of a Judge. I think that the present position is not as happy as it should be for the promotion of the judicial service, the simple reason being that the High Court Judge is expected to render justice, and he must be of a very high caliber. We know, Sir, of eminent Judges who had been there before the independence. I can say that they were appointed on merit and merit alone. But the deterioration that has come in after the independence, and particularly during the last ten years, is such that I can say, without casting aspersion, that the present strength, the present members of the Council of the High Court in Jammu & Kashmir were not known to me even personally or were not known to the judicial circles personally. But they were appointed somehow on political grounds. To obviate this, it is necessary that the Chief Justice must be involved, and the President must be bound by the advice of the Chief Justice.

The second point made with regard to the High Court is that it really supervises appointment of Munsifs and others. But the High Court i'Self is appointed by the executive. This is an anomely which has to be removed because if the High Court is appointed by the executive, the Judicial Munsifs can also be appointed by the executive. But because of the separation of the judiciary from the executive, this was thought feasible that it must be done, that is must be under the overall superintendence of the High Court

It is all the more necessary that the High Court Judges should be appointed for that purpose. The first point made by my learned friend is with regard to the Election Commissioner. I entirely agree with him that the Election Commissioner should also be appointed in the manner that he has proposed. At the present moment the Election Commissioner is the person of the Government of the day. I do not mean to say that it is only in the case of the Congress Government. Even during the Janata period, the Election Commissioner—we know it personally—was absolutely doing what the Home Mini-try or the Home Minister was telling. It is, therefore, very important "that we must have an Election Commissioner who must be above these things. The Election Commissioner does all these things simply to get further appointments as Governor or some other capacity. Therefore, I think this provision of the Election Com-

[Shri Ghulam Rasool Matto] missioner to be made in the manner as proposed by my friend is also very important.

Now, with regard to the appointment of the Governor, there is no doubt that he has to be appointed by the Central Government and hold office during the pleasure of the President. "He can be dismissed at the pleasure of the Preident because the Prime Minister desires him to do so. In these circumstances he is not expected to function fearlessly and discharge functions independently. It is, therefore, necessary to give him the same protection as given to the Supreme Court Jusdges under Article 124(4) of the Constitution in the matter of removal from Office." This is a quotation that I have made from the Statement of Objects and Reasons put forward by Shri Goyal. In every word of this Statement there is a rationale and correct thinking and this must be followed up.

There are certain provisions which are incidental to the amendments proposed and this is natural that when these amendments are enacted these things should be done.

Shri Bansal was also speaking against the provisions of these amendments. It is all right; each one has one's own opinion to express, but I would like to know the reaction of the Government with regard to the rationale and reasoning given by Shri Goyal. If the Government is able to convince me that the reasoning given by Shri Goyal is in contravention of the very spirit of the Constitution, then I am prepared to accept their reasoning.

In the end I personally feel that our dynamic Law Minister is also sympathetic to the suggestions made by Shri Goyal. If he is not in a position to say it openly at the present moment, I would make a request to him that he may appoint a Committee of seven retired Supreme Court Judges who will be entrusted with the reforms as proposed by Shri Goyal. I personally will be bound by the advice given by that Committee because that will be an opinion given by those people who have gone through the rut and at present have no axe to grind and they would give correct advice as to the rationale of Shri Goyal. I hope the Minister will react to my suggsestions also.

With these observations I support the Bill propose by Shri Goyal.

[The Vice-Chairman (Shri Pawan Kumar Bansal) in he chair.)]

SHRI BAHARUL ISLAM (Assam) : Mr. Vice-Chairman, Sir I think this Bill has been brought by Shri Goyal on a mis-understanding.

This Bill deals with three subjects :

(1) Apppointments of High Court and Supreme Court Judges (2) Appointment of governors; and (3) Appoittment of the Election Commissioner. I will deal only with the first subject. With regard to the first one, I respectfully submit that the Bill has been brought on a misunderstanding of relevant Constitutional provisions. If it can 4.00 PM be pointed out that the provisions made in the Constitution, namely, article 217 that deals with the appointment of High Court Judges and article 124 of the Constitution that deals with the appointment of Supreme Court Judges, then, possibly Shri Goyal may not have any grievance at all. Article 217 which deals with the appointment of High Court Judges says, you consult not only the Chief Justice but also other functionaries. Now, the suggestion of Mr. Goyal is that the Supreme Court should be given powers in the matter of appointment of the Judges of the Supreme Court and of High Courts but not the executive.

Now, I would submit practically it is impossible. The Chief Justice cannot make an appointment or cannot select a suitable person for appointment. It is not possible for him. How is the initiative for the appointment of High Court Judges taken? The initiative is taken by the Chief Justice of the High Court. He initiates the name of a suitable person for the appointment of a judge of a particular High Court. Then that goes to the Governor. Governor in practice sends it to the Chief Minister. How can a Chief Justice know whether a particular person is suitable to be apppointed as the High Court Judge. For that two things are necessary: (1) His legal merit as an Advocate if he is to be taken from the Bar, (2) If he is taken from the subordinate judiciary his performance as the District Judge or some sort of such thing.. That is possible for the Chief Justice to know. But how will the Chief Justice know the character of the person concerned? He has no agency to inform him. He does not have his suitable ears to hear or suitable eye to see, but by its agencies, the executive may know the character of a particular person. A particular Advocate may be a very brilliant practitioner and may seem to be suitable for appointment as the High Court Judge, but he may lack in character. Only the executive may know about this. Therefore, the consultations with the executive is a must. Otherwise, you cannot appoint a suitable Judge. But the thing which the Hon. Member wants is very much there in the Constitution; for article 217 of the Constitution says that the Chief Justice shall initiate the names. Can you give an instance wherein the President of India has appointed a Judge whose name was not recommended by the Chief Justice or a person who has been thrust upon a particular High Court contrary to the recommendation of the Chief Justice of a High Court? It is not so. So the practical procedure is that the Chief Justice will initiate. He will submit the names to the Governor. It is a very salutarv principle in my opinion.

For example in Assam the High Court represents five States. So the Chief Justice sends his recommendation to the five Chief Ministers. When the five Chief Ministers say 'yes' then the matter will go to the Governor, Now, there are two Governors. So after they agree the name will come to the Minister of Law and Justice here in Delhi. The Minister of Law and Justice in consultation with the Home Minister ascertains the antecedents and the character of the person whose name has been recommended. If the Minister of Law and Justice is satisfied then the name would go to the Prime Minister. In this case, the Prime Minister is also consulted. If the Prime Minister says 'yes' then his name goes to the President, who makes the formal appointment. That is the procedure so far as the appointment of a High Court Judge is concerned.

So far as the appointment of a Chief Justice of the High Court is concerned, the name is recommended by the Chief Justice of India, mind you, because Mr. Goyal's advaice is to consult the Chief Justice only. The name of the Chief Justice initiated by the chief Justice of India, the Chief Justice of India is very much there. Then the name comes to the Minister of Law and Justice. The Minister of Law and Justice in consultation with the Home Minister who knows the antecedents and the character of the candidate during his tenure as the puisne Judge, accepts or rejects the name. If the Law Minister says '>es' then it gees to the Prime Minister. If the Prime Minister clears it, then it goes to the President. Then the President makes the appointment. Now, so far as the appointment of a Supreme Court Judge is concerned, in that case the name of the Judge for the Supreme Court is also initiated by the Chief Justice of India, because here your suggestion is to'

[Shri Baharal Islam] consult the Chief Justice of India. He is there. It is he who recommends the name and unless the name is recommended by the Chief Justice of India, nobody can be and is appointed as Judge of the Supreme Court. Now, if that name is accepted by the Minister of Law and Justice and if he knows the antecedents and character and all that of a particular person to be satisfactory, then he is appointed. Now, so far as the Chief Justice of India is concerned, he stands on a different footing altogether; your suggestion is, "appoint the senior-most Judge." I think that cannot be a salutary principle. Seniority should not be the sole criterion. Merit-cum-seniority should be the criteria. Because at the time of appointment, you may be a different man but you may change; a man changes from good to bad, from bad to good al o. So, during your performance, you might have proved otherwise. But if you are working there, if you have merit and seniority, certainly, you are the most suitable per on to be appointed the Chief Justice of India and when your name goes, no doubt, your name will be accepted. Your name first will have to be recommended by the Chief Justice of India. I mean the name for the appointment of the judge of the Supreme Court will have to be accepted first by the Chief Justice of India, then by the Minister of Law and Ju lice, and then by the Prime Mini ter and then it will go to the Pre.ident of India. Therefore, the very principle, the very idea advanced by you is already there in the Constitution of India in those two Articles. But so far as the Chief Justice of India is concerned, my respectful submission is that not seniority alone but merit-cum-seniority should be the criterion always and so far as other section is concerned, namely to consult the Chief Justice and not the Executive. I have already made a submission before this House that it is practically absurd. In that case, you may appoint a person who has a sharp tongue but lacks character. Such appointments will be bad. Do not always suspect that all the appointments made here in the Indian Judiciary are bad. Indian Judiciary till today, right from the day of independence is keeping its head very high. It has been appreciated. I have visited several foreign countries. People there speak very highly about our judiciary. It is keeping its head very high. What is more important is character. For example, in America; it is known to everybody that political appointments are made in the federal Judiciary of lawyers from active political life. But the moment they become judges, they develop an entirely different character. Nobody has been able to say these people were corrupt. Even while one person M: .Taft who was the PreMdent of America, became also the Chief Justice of the Federal Court of America. Nobody up till now has said that he became a corrupt Chief Justice of America. First, he was a President of U.S.A., later on, he became the Chief Justice of the Federal Court of America. But nobody has alleged that he was corrupt. It depends on the Character of a particular person.

Therefore, my submission, Sir, is that this Bill appears to be based on a misunderstanding or suspicion. If this misunderstanding 01 suspicion is removed, then the salutary provisions are already there in the Constitution, and the Bill becomes irrelevant.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra) : Mr. Vice-Chairman, Sir, there aro many things about which we, as Indians, are to feel very proud and this pride is not only recognised but shared also by the international community at large. The first and foremost about which we should be very proud is our democracy is vibrant, mature, dependable, democracy of the

largest number. It is a democracy which has survived in a soil where everywhere around, it has been destroyed; Pakistan, Bangladesh, Burma, China—take any country. That is the first thing. Along with that is the fact that we are a free and open society. Our democracy is recognised as one of the best—• undoubtedly the largest—in the whole world because of the elective process where we have a universal adult franchise. I remember the days when the first Governor-General of India, Mr. Rajagopalachari, the revered Bhishma of Indian politics, felt that the electorate should be restricted or limited. But the founding fathers of our Constitution thought that there was great wisdom and sagacity even amongst the most illiterate of our men and women. And time has proved that though many of them may be illiterate, none of them is ignorant and everyone knows what is best for our country, its progress and its future. It is little known but even our Election Commission is one of the widely respected organs outside our country.

Then we have the Parliament. We have in our country principle of accountability because the Members of Parliament are elected and they are at all times subject to the pressures of public opinion, The opinion of their constituents. The performance of Indian Parliament has been one of the best in the world. We have a tendency—I do not subscribe to that tendency—and that is, I think nobody derides politicians more than the politicians themselves. We are a lot, of whom I am proud. I am proud to be a politican, just as I am equally proud to be a lawyer. And above all, I am proud to be a citizen of this great country. I think the politicians in our country do a great deal. I mean, there is no other country where you will find that a politician is so much involved with his constituents, with his people with his country, with the affairs that he ought to know; and the affairs are really multi-dimensional; they are complex and far too many.

And we- are, of course, very proud of our judiciary. These are all organ? which have stood the test of time. Today if somebody feels safe in our country, it is because the rule of law is the bed-rock of our democracy and everybody knows that there will be no wrong which cannot be corrected in a court of law. We are proud of the heritage that judges have risen to great heights in protecting the liberty of an ordinary citizen. There is an instrument, there is a remedy, there is a cure available for every citizen against every executive wrong or arbitrariness. This is a very unique feature. And the way in which the law has been developed and the enforcement of fundamental rights through the powers given to the High Courts and the Supreme Court under articles 226 and 32 of the Constitution are a marvel. The public interest litigation which is now being develpped by one of the most eminent Chief Justices of our country, Chief Justice Bhagwati, has really become a model. The other countries just cannot think of doing for a common man so much through the judicial process which we have adopted. So, in a matter of the dignity and the independence of the judiciary and the judges our country holds its head very high, and I as a humble citizen of this country also hold it very high. But there is one aspect about which I have repeatedly felt some reservations and I must aii my reservations. It is the oft-amendment of the Constitution. I think that the Constitution should not be amended, we whould not tinker with the Constitution unless the necessity is so imminent and so pressing, the result so immediately needed that we cannot postpone it. I have great faith in the wisdom, in the sagacity, in the concern, in the anxiety which the founding fathers of the Constitution had shown in framing the Constitution. I will be very very reluctant in time kering with it or coming out with

[Shri Murlidhar Chandiakant Shandare] ,

an amendment of it. I think the best answer that we can give is to see how these various systems, including our elective process, have worked so long. It is all right to say for the honourable Member that the Election Commission is an agent of the Government. We have several million people going to cast their votes. Can the honourable Member point out cases where really elections have not been free and fair ? It is a matter of pride. As has been rightly pointed out by the honourable Shri Baharul Islam, it is something that when man gets into a position, he holds that position, he becomes independent. And I would not condemn a man and I would not condemn the judges either though I would not say that the rule does not have an exeception. Just as we have found that there are some corrupt politicians, it may be that there are some judges, very few, far in between, very isolated instances, and it is really difficult to find out; but, by and large, the judges have been known in our country by their independence, by their industry and, above all, by their integrity. And we should be extremely careful before we touch a system which has been evolved and stood the test of time. There is no material before this august House today to say that what has really been done all these years—a system of very intricate checks and balances—has not worked. One will realise only when we disturb the balance after five years and say, "Oh! Why did we have to change this Constitution and place it in the hands of the High Court or the Supreme Court?" There must be some basic reason why this system was adopted and that basic reason, according to me, is that the will of our people is supreme in our country, and the will of the people is reflected in their election of Members of Parliament and it is the leader of the largest party or the majority party in Parliament who becomes the Prime Minister. Therefore, the executive in our country is only a child of the legislature. At all times it is at the mercy of the legislature. The legislature can put the government or it can remove the government. The legislature can vote somebody as leader of the party, it can remove him as leader of the party. Therefore, the whole fulcrum of the system in which the affairs of the country should be administered is seen in Article 74 which says—

> "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of hi-functions, act in accordance with such advice."

The words are "shall act in accordance with such advice." You have no discretion left and it is mandatory. He has to act according to the advice of the Prime Mimister and his Council of Ministers. I think that is the basis. Ultimately the Council of Ministers reflects the will of the people and it is this which is sought to be touched by the amendments which are proposed now. I think it is again the basic structure. It may be that appointment of 'A' and appointment of 'B' may not be satisfactory. But as against that, there are so many appointments of judges which have been very satisfactory. But, I for one would say, and I am pained always to see, that the appointments of judges do not take place on time and they are delayed. Whenever you ask about it, they say that they are round the corner, that it is all over. When I was asking about it in November they said that it would be over in December. When I asked about it in December, I was told that they would do in the new year and that it would be a new Year Gift. But, when I asked about it in January, they said that they would do it before the end of the financial year. But I know the difficulties also. But there is no reason at all for us to change this system which has really stood the test of time for

a very long time. I say this because, as 1 said earlier, it is based on a very intricate system of checks and balances. I fully agree with my honourable friend, Shri Baharul Islam. It originates from the Chief Justice of the High Court for the High Court and it originates from the Chief Justice of India or the Supreme Court and, as has rightly been said, there is no case in the recent history or even in the remote history in which the recommendation of any Chief Justice or the recommendation particularly of the Chief Justice of India has ever been ignored and not a single such appointment has been made, to my knowledge, ignoring the advice of the Chief Justice. And, Sir, I expect the honourable Member who has moved this Constitution (Amendment) Bill to come out with a single instance where, in the matter of appointments, the wishes of the Chief Justice of India were ignored and the appointments were made. I am on a firmer ground on this matter end I tell you how. Now, look at the U.S. There the Judges of the Supreme Court are elected and they are subjected to great scrutiny. Their income-tax returns are gone into, their previous career is closely examined and, after that, they come there. They are more or less political appointments. It is political there and it is Reagan's Court and that is why Roosevelt threatened to pack off the Court when his "New Deal" was not coming through. Yet as has been pointed out, people with very long training at the bar, following an independent profession of lawyers, at all times continue to be objective and they continue to be independent. I will give you a rough illustration. It is very difficult to persuade a brother lawyer who is appearing against you even to agree to a very reasonable thing at any time. The point which I am making is that if you cannot influence or corrupt a brother lawyer, how can you influence or corrupt a judge ? If these were to be in the hands of the judiciary, it may be that judges may be chosen on merit, integrity and character, as has been pointed out. But I also know that judges being human beings are also interested in their relations, interested in their friends, and they at times choose on considerations which are devoid of either character or talent or merit or independence. So when you leave specially for one to decide how to appoint Judges, one system is going to be as bad as the other. Here it will be absolutely a closed house—18 Judges in the Supreme Court deciding who should be appointed, because the Governor does not have a say the President doest not have a say, the Prime Minister does not have a say and the Executive does not have a say. I think this sort of mechanism was adopted wih a definite purpose, namely, that who ought to be consulted for ascertaining the character and integrity of the man. Ultimately, the Chief Justice cannot start an intelligence inquiry into the antecedents. What I really think is that if somebody wants to do it, even without amending the Constitution, we should introduce some, little different norms. I am very happy that the hon. Minister of State for Law and Justice is here, and I will place it for the consideration of the Government, through him. I think it is a matter worth considering whether the consultation should not be really broad-based and something more should be known about a lawer. 1 mean, ultimately, when you choose a lawyer, there should be at least ten to fifteen leading matters in which he would have appeared, so that we can see because a successful lawyer is not necessarily the best lawyer. Unfortunately, in our country money has become the measure of a man. Or, more so, particularly in my profession, money has become the measure of the successful lawyer. I know a brilliant labour lawyer. He was doing cases for a pittance. I think there is no restriction of time today.

He was doing cases for a pittance.He was a most leading lawyer inBombay, appearing before benches,

[Shri Murlidhar Chandrakant Bhandare]

tribunals, before every conceivable national tribunal that was appointed. Then, somehow he had a fight with the Unions which wer6 backing him, and the Unions decided to withdraw their cases from him. And he changed over to the employer's side. Will you believe that overnight his pracitce went up ten times. If he was earning Rs. 2000 a month —as a leading lawyer for the labour —he started with Rs. 20,000 a month overnight. And within three months he was asked whether he would like to be a judge of the Bombay High Court. And he went and told the Chief Justice: It is not because I am earning more that 1 refuse it, but my regret is that you did not consider me fit enough when I was the labour's lawyer. The same man, a man of character, a man of great merit ? Now, I am merely telling how the Chief Justices also tend to make recommendations on really not sound considerations. Therefore, the point which I am making is that this is a matter where we should not tinker. We should leave this matter—as I said, look at the position in the U.K. There the highest judicial officer is Lord Chancellor. And he is also a member of the Cabinet. He sits in the same seat in which you are sitting now. He presides over the deliberations of the House of Lords. And yet nobody thinks that when he presides on the bench of the Privy Council or when he presides over the Judicial Committee of the House of Lords, he is mixing politics or anything else. He is independent. He attends even the Cabinet meetings. That is the character which is known of lawyers and Judges. Our Judges have been known for their fearless independence. U.S.A. and U.K.—everybody will admit that one is the mother of democracy and the other is a powerful democracy or whatever you may say. I am proud that we are both the largest and the greatest democracy.

SHRI DIPEN GHOSH (West Bengal) : U.S.A. is the father of democracy.

SHRI MURLIDHAR CHAND-RAKANT BHANDARE : We will be the grand-father of democracy. I am proud to be an Indian. The point that I am making is that if there are some distortions or if there are some occasional comments, they should really be overlooked because the system, by far, has been found to be very very useful and thrown up the best of Judges. I know that there was a very con troversial matter discussed by the Supreme Court and many have not liked the judgment of the highest court of the land, the Supreme Court of India, holding that the executive has primacy in the appointment of Judges. But it cannot be forgotten that the executive has a primacy in all the affairs of the country and, therefore, it should not be denied this primacy. To come back to what I was saying, I think there should be a larger consultation. Today the Bar is not involved at all. I do not know why there should not be a Standing Committee in the High Courts or a Bar Committee in the High Courts and in the Supreme Court which could make their recommendations and recommend those men whom they consider as men of honour, men of integrity, men of independence, men of character, men who are fit to be Judges. Why should the recom-mendation of the Bar also should not be considered by the Chief Justice or the Judges of the High Courts or the Supreme Court before they make their recommendations?

Then I have also a feeling that more material should be obtained about the staff, material in the sense of legal material. I am not talking about intelligence reports because I know in what way they are made. You can get the intelligence report the way you want. If you want to appoint a Judge, you can refresh...

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ) : This is wrong. Where are you deriving it from?

SHRI MURLIDHAR CHAND-RAKANT BHANDARE : I am saying about it. I am talking about an appointment in 1960. I mean ...

SHRI H.R. BHARDWAJ : I want to contradict it.

SHRI MURLIDHAR CHAND-RAKANT BHANDARE : I have not said even one word. How will I say against my Government? But I know of a case in 1960. I am talking about 1960. One of my students was an officer in the C.I.D. dealing with these things. I won't mind if the cap fits him. The hon. Law Minister of State can wear it. I am not saying anything. I am only giving what my experience is.

SHRI H.R. BHARDWAJ : The cap fit,; on you because you are making this allegation that they are ...

SHRI MURLIDHAR CHAND-RAKANT BHANDARE : I do not kiow why should he take upon himself. I have knov?n some cases end I am prepared to prove them. Let him not say that. But I am prepared to prove it. I do not understand the way he has reacted. I was giving an instance of 1960. I was not even going to show instance. I was on a more informal, a more wide-based system for the selection of Judges. More members of the Bar should have a say in that. I do not know why suddenly the hon. Minister feels...

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL) : Please continue with your speech.

SHRI MURLIDHAR CHAND-RAKANT BHANDARE : I have



to talk about the Election Commission also.

SHRI H.R. BHARDWAJ : Sir,' I wanted to intervene at 4.30 p.m. I told you.

SHRI MURLIDHAR CHAND-j RAKANT BHANDARE : But I also asked you.THE VICE-CHAIRMAN (SHRI j PAWAN KUMAR BANSAL) : Ij did say that you could continue. But try to be brief. If we could finish it, it would be good enough. I am not asking you to sit down.

SHRI MURLIDHAR CHAND-RAKANT BHANDARE : How many more speakers are there ?

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL) : Well, you are the last speaker. Then the Minister and then the Mover.

SHRI MURLIDHAR CHAND-RAKANT BHANDARE : But there has been a rejoinder which was thoroughly unnecessary and uncalled for. I had not mentioned it. The hon. Minister has taken upon himself and invited himself to say all these things. All that I will say is this that this gentleman came to me when I was teaching in the Government Law College, Bombay, and said, "Sir, what do you think of so and so." "A very honest and a very great lawyer?" I said, "why?" because he was one of my best friends. He did not know that he was my friend. He said, "His name ifl being proposed for the Judgeship of the Bombay High Court and I have to make a report and somebody has approached me to say that he is not fit to be a Judge." I said, "Thank God. You asked me. You cannot get a better Judge and unless you have facts to the contrary, please do not make such a report because somebody else asked to do this." So, this was my experience. And that gentleman is a very high officer today. And my friend was also appointed as Judge

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and he became a very distinguished Judge and later a politician. The point which I am saying is that this is my own experience. Therefore, all that I am saying is that in these matters, there should be a broad-based consultation. We should really pick up men of honour and men of integrity. And they ask for income-tax returns of prospective judges. I do not know why because if a man is serving the poor or if there is a men who is only doing the cases of the poor, he may not show return of Rs. 5,000 per month. And I know in my young days—we do even n( i>w—we used to spend out of our pocket so that the clients do not haw to suffer because they did not haw the money to pay. Today the only measure is that you first bring he income-tax return and you do not find out in how many cases ha appeared and what he has argued. There are many things. The system does call for some sort of a rethinking from time to time because nothing is permanent.

Then , Sir, there is the question of supetsession. You know that it was as early as by the First Law Comission that a recommendation was made that in the matter of appointment of the Chief Justice, it should not be really on the basii; of seniority. And that recommendation was made in those days by a Law Commission which was presided over by possibly the most distinguished lawyer in our country in the post-independence days, Mr. Setalvad. And Mr. Palkhiwala was also a member. And Mt. Wanchoo who later beacame the Chittf Justice of India was also a membei. And an unanimous recommendation was made that when you want to chooue the captain, when you want to choose the head of the judiciary in the country, the rule of seniority is not necessarily the golden rule. You must choose a man on the basis of merit. .And this was the recommendation So, I am very clear in my mind that such occasions of supersession will indeed be very few. But if they are necessary~I think, they are necessary— we should not just shirk away and follow the rule of seniority and not take into account at the same time the merit of the man who is going to be the Chief Justice. All in all, I think, the Mover of the Bill he has succeeded in focussing the attention on whatever he had to say. And I hope that we will not support it but the Mover himself, the hon. Member, would think it fit to withdraw this Bill. Thank you.

SHRI H. R. BHARDWAJ: Sir, I rriust express my thanks to the hon. Members who have spoken on this Bill Now, more or less, the points have been discussed threadbare. So far as the Bill is concerned, it proposes amend ments as follows: (a) appointment of Prime Minister and Governors, (b) appointments of Judges of the Supreme Court and the High Courts, and (c) appointment of the Chief Election Commissioner and other Commissioners. Sir, I will deal with each aspect one by one.

So far as the appointment of the Prime Minister is concerned, it is very well known that the President appo-• ints the Prime Minister and the person has to be a person whose party is in majority in the Lok Sabha. If this is not followed, then it. comes to this that the people's mandate, by which we govern will not be really the criterion to appoint the Prime Minister. The thing is that in the democratic set up, in the parliamentary democracy that India is, it is provided that the person who is the leader of the party, which is in majority in the Lok Sabha, shall be the Prime Minister of the country. This has worked very well and we in India are proud that our democracy is not only largest but is also a very successful democracy. So I do not think that there is any misgiving with regard to this. We cannot find any shortcoming in this system. I would also like to correct the hon. Member, when he said that the Prime Minister, Shri Rajiv Gandhi, was not elected by the party, I think he is not properly informed, he was elected by

the Legislature Party, by our Party, with a unanimous acclaim. There is no doubt about it. *(Interruptions)*. Please hear me. The Prime Minister was elected by the Legislature Party including the Lok Sabha. *(Interruptions)*.

PROF. C. LAKSHMANNA (Andhra Pradesh): Sir, I seek your protection.

SHRI H. R. BHARDWAJ: This controveray is absolutely unforunded. Therefore, Kindly do not make insinuations which are not correct. I want to put the record straight.

PROF C. LAKSHMANNA: The Minister is saying something which is not correct. He was not elected by the Parliamentary party.

SHRI H. R. BHARDWAJ: You did not want to speek and now you want the floor to be given to you. Now, you are not a Member of our Party. We were the persons who were there. Our whole Legislature Party. Rajya Sabha, Lok Sabha, unanimously elecfed him Therefore, this apprehension is wholly unfounded.

So far as the appointment of Governors is concerned, you know it very well that the President appoints the Governor and he has two-fold responsibility. One as the head of the State, and, the other, as a Link between the Centre and the States, he acts as the head of the State on the aid and advice of the Chief Minister and the Council of Ministers. That is again to give him that democratic spirit that he will always be advLed by the Council of Ministers in the State. Therefore, to that extent he acts as the head of the State in that particular State and later on he also acts as a link between the Centre and the States. It is so because the Centre is also charged vith the responsibility that the State Governments are run properly according to the Constitution. Therefore, ihe appointment of the Governor should remain with the President. I do not see any reason to associate anybody else in the appointment of the Governor. This is a provision which is working very well in the Constitution, working according to the spirit of democracy of the country and democracy is the only thing that we have accepted and there is no question of deviating from this system. It is only the individuals who matter, who occupy that position, if we choose the right person and he performs his duty according to the Constitution, there is no difficulty but the difficulty comes only if someone appoints a wrong person. Therefore, so long as the person acts in accordance with the con stitution, there should be no apprehension in the hon. Member's mind.

With regard to judges, there is an in-built system in the Constitution and that in-built system works on sound principle of the theory of separation of powers. There is the execntive which I understand must be very fair and firm. There should be a judiciary which should be independent and there should be a legislature which must be supreme in the country. That is my feeling, and this is the philosophy in the Constitution. Anybody who want to undermine either the independence of the judiciary or the firmness and fairness of the executive or the supermacy of the legislature I don't think, correctly appreciates the infuilt spirit of the Const[1]tution, that is, the theory of separation of powers, that is given in our Const-tution. Therefore, I had to intervene when my own friends spoke that IE reports are procured on the appointment of judges. We do not act on any procured reports. We have a correct assessment of the individual that in going to be appointed as the judge. How do we do it. Let my friend understand it. We are only guided by the recommendations of the Chief Justice. The Chief Justice of the High Court recommends the names. There is no other authority which can recommend the names.

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Then that recommendation goes to the Chief Minister or the Governor of the State. After both of them have been consulted, it goes to the leader of the judiciary, namely, Chief Justice of the Supreme Court. He knous all the Constitutional provisions. All the three recommendations* the recommendation of the Chief Justice, the recommendation of the Governor and the recommendation of the Chief Minister, are there and all other relevant data which is supplied by the Constitutional i'unctionaiies, is before him. He then finally decides out of the names and recommends suitable persons. The question is the suitability part of it. Therefore, when he recommends that so and so are the fit persons to be appointed, then there is hardly an occasion where we can interfere, becavse we do not sit on the. judgement of the Chief Justice of Supreme Couit. We only accept the recommencation of the Chief Justice of India and forward the case to the Prime Minister and President who appoints these persons. There is so much of consultation that sometimes we are accused of delaying the appointment because the system is in-built in the Constitution *to* provide all safeguards because the position of the High Court judge in the Constitution and the high position in the judicial heirarchy is such that every check and balance has to be gone into. Justice Baharul Islam pointed out that in Assam, we have to consult five Chief Ministers, two Governors and one Chief Justice. So it takes time. But I am proud that it gives us a proper guidance when the file comes to us and we evaluate the case which is sent and we find always that the best possible person has come. There is absolutely no point in saying that these consultations are unnecessary because the High Court Chief Justice knows the person who is practising before him. This institution has practically served so much that every Chief" Justice would accept it. He can assess the person whom he recommends. Where is the question of going wrong anywhere? Consideration of income tax and other considerations we are aware, are relevant to asses$_s$ the quality of the person but the question is, income tax is not the criterion, otherwise only the rich people will become judges. The question is that the criterion followed should serve the cause of check and balance. So, when a person is to be appointed as judge of the High Court, the names are suggested and we accept the recommendation and thereafter the Chief Justice of India lecommends the names and this recommendation is invariably accepted by the Government. Never have we opposed the recommendation of the Chief Justice of India.

Similarly, in the appointment of Chief Justices, we have gone by the recommendations of the Chief Justice of India. We have said it on the floor of the House that we will never deviate.

I will be very happy to deal with it if any hon. Member comes forward on the floor of the House with a complaint that here is a case where we have appointed a person who has not been recommended by the Chief Justice. These are the instances whi.h I expect to be pointed out and I will be very happy to remove their misapprehensions. Therefore, Sir, though there may be delay in some cases, they are being appointed according to the Constitutional provisions and there is no occasion for deviating from that Constitutional provision.

Similarly, in the case of the Chief Election Commissioner. How many Election Commissioners we had in the past? One appointed by the

Janata Government, the other appointed by the Congress Government and the present one. They have all acted very fairly. We have no Complaints in this regard. A number of General-Elections have been conducted. If there is a problem, the problem lies with we, politicians, who really do, for certain reasons, something. But it never lies with the Election Commission, because they act fairly and reasonably and discharge their duties according to the Constitution. Therefore, we should try to correct where the mistake lies. The blame should not be put on an institution which has served us well. It has served us very well. Look at the vastness of the country and the multitude of the people we have. The Chief Election Commissioner sitting in one corner of his office in Delhi and having his Chief Electc: I Officers in the States, has done wonders in this country without the aid of any computer or any voting machine. We have worked on manual strength with precision. Elections have been held in time and the results have been announced promptly. This is the success of our system. This is the success we have achieved. We should be proud of Such achievement rather than criticise it. In all these institutions where my learned friend wants that there should be a change, it should be a change for the better. If the Opposition people are defeated at the polls, why should they say that they should also be consulted on these 'appointments? Where it is provided in the Constitution? In that case, you should either give a go-by to the Constitution or you should not ask for these things. The elected Government has to run the country so long as it enjoys the confidence of the House. Therefore, all these provisions which my hon. friend has suggested by way of amendment to the Constitution are wholly unwarranted. The only thing is, we should improve our own quality. I must improve my quality He must improve his quality.

Everybody should improve his quali ty as an individual. Then, insti tutions will improve with the improvement in the quality of the individuals. Once the institutions improve, each one of us will per form his duty fearlessly, reasonably, without favour. You will see the change will come. Instances from America were quoted. Instances from U.K. were quoted. These are all wholly irrelevant in our case. We know, our country has moral strength has strength of every kind. The only thing is, vve have to rise to the occassion. I would appeal to the hon. Member. Our country is progressing very fast. Our country has shown its mettle. There is no occasion to misunderstand our own selves. We should go into electoral reforms. We will go into it. I would request hon. Members. I would appeal to my hon. friend who is a very senior" counsel in the Supreme Court, that whenever, there is an instance where he finds that something wron? has been done, he should come to me, he should come to Mr. Sen and we will correct it. Let him go to the Chief Justice of India. He knows him very well. Has it ever happened, has there been any occasion for them to say, that something wrong has been done ? We will be very happy to remove their . doubts. We want to work in a spirit of co-operation and in a friendly atmosphere. It cannot be that any hon. Member of this august House comes to us and we say that we will not attend to his complaint. It will be rectified immediately. You should have confidence in us. Mr. Sen is a very respectable member of the Bar of the Supreme Court. Therefore, you can always confide in us. Let us discuss things in the House. Let us discuss outside, rather than go on amending the Constitution. Amendment of the Constitution will not give us anything unless we amend ourselves* Therefore, I would appeal to Mr-Goyal to withdraw his Bill and

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let us work in harmony because this is the occasion where harmony is required. Confrontation will not pay. I have given an invitation to all Members that whenever they find something unfair being done, they should draw our attention and if we do not do anything, then, they can take up the matter in the House. Therefore, Sir, I will request Mr. Goyal to withdraw his Bill.

SHRI J. P. GOYAL : Sir, I wil[1] take only five minutes.

SHRI S.W. DHABE (Maharashtra) = This can be carried over to the next non-official day. You can speak up to 5 P.M.

SHRI J. P. GOYAL : Sir, I must, at the very outset, say that we have no complaints against both the present Cabinet Minister, Mr. Asoke Sen, and his . deputy, Mr. Bhardwaj. Repeatedly thay have said the same-thing in the House which the hon. Minister has said now but this amendment was moved in 1982 and this amendment is not against any person or against any Minister. This is the Constitutional amendment brought in because of the experience which we have had of the working of these articles of the Constitution in the past. The Con titution is not for one day, it is for all times to come. So, amendments are required whether they are in the law or in the Constitution. Of course, certain provisions are already there. If they are worked out honestly, they are good, but the law is made or amendments are made just to avoid any difficulties or is dishonest working of the law.

Here I would like to give one example. I cannot finish my reply today but I must say something in reply to what is the hon. Ministtr has said. These are the *bona fide* reasons why I have fought these amendments. For example, take the appointment of the Prime Minister or the Chief Minister. No doubt the leader of the majoroity party would be the Prime Minister or the Chief Minister . There is no doubt about it, but who is the leader, who would be the leader? Opposition people also must know, the country must know who the leader of that party is. We have democracy in our country and democracty is our motto. So, in the case of the present Prime Minister I have to give the facts. The facts are that at 6.00 p.m. that day on 31st October, 1984 the death of the former Prime Minister, was announced and I think at about 8 or 9 O'clock in the night the present Prime Minister was sworn in under articles 75 ofi the Constitution. When the opposition people cried that this was not a proper appointment under article 75 of the Constitution, later on, after two or three days, the Parliamentary Congress Party approved that appointment the President. So, this is putting the cart before the horse. I am giving another example of Haryana.

श्री राम चन्द्र बिकल (उत्तर प्रदेश) : गोयल साहब से मैं पूछना चाहता हूं कि चौधरी साहब का न तो पार्टी में बहुमत था, न सदन में लेकिन राष्ट्रपति ने श्रौथ दिला दी ।

श्री वीरेन्द्र वर्मा (उत्तर प्रदेश) : इसीलिए तो सुझाव दे रहे हैं।

श्रीमती प्रतिभा सिंह : सदन तो उन्होंने फेस किया ही नहीं, फिर भी प्रधान मंत्री बन गए ।

श्री राम चन्द्र बिकल : ढाई वर्ष में आपने देश को तमाशा दिखाया जब आप शासन में रहे।

SHRI J. P. GOYAL : Situations do aiise when the President has to act and that is why these Amendments. According to your own showing according to the showing of

Mr. Vikal himself, such situation have arisen in the past. Difficult situations have arisen in the past. That is why I am seeking these amendments. F0r example what happened in Haryana ? Mr. Tapase, the then Governor of Haryana, is asking Mr. Devi Lai to come tomorrow 10 or something like that. Then some message comes from the Centre to the Governor and without the knowledge of .anybody, the present Chief Minister, Mr. Bhajan Lai, is sworn in. *(Interruptions).*

THE VICE-CHAIRMAN (SHR1 PAWAN KUMAR BANSAL) : we continue with the discussion next time. Now we take up the statement by Mr. Buta Singh.

5. p. M.

STATEMENT BY MIN1STER-

Statutory minimum price for Raw Jute for 1986-87

THE MINISTER OF AGRICULTURE (SHRI BUTA SINGH): Sir, I would like to make the following statement :

1. Government have fixed the statutory minimum price of raw jute for the 1986-87 season after taking into account all relevant factors including the latest changes in the administered prices of fertilisers and some petroleum products.

2. The statutory minimum price for W-5 grade of raw jute in Assam has been fixed at Rs. 225 per quintal. The corresponding prices for various grades at different centres will be fixed by the Jute Commissioner in the light of normal market differentials.

.d The Jute Corporation of India will undertake market support operations, as and when necessary.

SHRI CHITTA BASU (West Bengal) : May I seek some clarifications from the hon. Minister ?

SHRI KALPNATH RAI (Uttar Pradesh) : How ?

SHRI CHITTA BASU : I am seeking clarifications only.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL) : Please continue. But be brief.

SHRI CHITTA BASU : That is all right, Sir. May I know from the hon. Minister what are the relevant factors which have been taken into account before arriving at the statutory minimum price of raw jute at Rs. 225 per quintal ? Was this principle taken into consideration, namely cost of production plus cost of transport to the market, plus reasonable margin of profit and the risk allowance for the grower. He has said that all the relevant factors have been taken into account. I would like to know whether all these factors have also been taken into account in arriving at the statutory minimum price of Rs. 225 per quintal.

Secondly, I would like to know whether they have also taken into account the other relevant factors, e.g. the question of procurement, the question of manufacturing cost, export etc. As a matter of fact, the present organisations of the country ha,ve been demanding six demands—i.e. no fixation of ceiling price of raw jute, minimum price should be fixed at Rs. 600 per quintal all over the country, procurement by the JCI of the entire quantity of raw jute directly from the growers and nationalisation of jute industry in all its aspects, namely raw jute trade, manufacture and export-import trade. These alone can save the jute growers from the exploitation to which they have been subjected to for centuries together.

Will the hon. Minister clarify these points ?